There will also be an order for costs here and in the court below against the appellant.

Appeal allowed.

Solicitors: *Skrine & Co.*

PUBLIC PROSECUTOR v. HEW YEW

[R.Cr.J. (Raja Azlan Shah J.) January 4, 1972]

[Kuala Lumpur — Selangor Criminal Revision No. 13 of 1971]

Criminal Law and Procedure — Sentence — Police supervisee — Restriction to remain within doors — Failure to comply — Whether fine can be substituted for imprisonment — Prevention of Crime Ordinance, 1959, ss. 2, 15 (2)(f), and (4).

This case was heard in the High Court exercising its revisionary jurisdiction. The subject, a registered person defined by section 2 of the Prevention of Crime Ordinance, 1959, and being subject to police supervision for a term of 3 years, failed to comply with the restriction to remain within doors under section 15(2)(f) and punishable under section 15(4) of the said Ordinance. In the lower court he pleaded guilty and was fined $100.

It was sought to revise the order of the lower court on the ground that the learned president had erred in law in imposing a fine instead of a prison sentence.

Held: the court has an absolute discretion to impose the maximum sentence of five years or any lesser sentence, the minimum of which must not be less than two years. Therefore, the sentence of fine will be set aside and substituted by a sentence of two years' imprisonment.

Cases referred to:-

(1) *Public Prosecutor* v. *Lee Ah Sam* [1949] M.L.J. 236.

(2) *Khor Seek Pok* v. *Public Prosecutor* [1958] M.L.J. 170.

(3) *Public Prosecutor* v. *Wahab* [1964] M.L.J. 265.

(4) *Darus* v. *Public Prosecutor* [1964] M.L.J. 322.

CRIMINAL REVISION.

Raja Azlan Shah J.: The subject, a registered person defined by section 2 of the Prevention of Crime Ordinance, 1959 and being subject to police supervision for a term of 3 years with effect from April 8, 1969, failed to comply with the restriction to remain within doors under section 15(2)(f) and punishable under section 15(4) of the said Ordinance. In the lower court he pleaded guilty and was fined $100 in default one month's imprisonment.

I have been asked to revise the order of the lower court on the ground that the learned president had erred in law in imposing a fine instead of prison sentence. Section 15(4) of the Ordinance states that a registered person who contravenes or fails to comply with any order or restriction imposed on him under this section shall be guilty of an offence and "shall be liable to imprisonment for a term not exceeding five years and not less than two years".

There have been a few judicial pronouncements on the words "shall be liable". In *Public Prosecutor* v. *Lee Ah Sam*[1] regulation 5(1) of the Emergency Regulations, 1949 provides that the person guilty of the offence "shall be liable to be punished with death or penal servitude for life and whipping". The Court of Appeal held that the sentence of penal servitude for life is a maximum sentence and any lesser sentence of penal servitude may be imposed. In *Khor Seek Pok* v. *Public Prosecutor*[2] section 6 of the Dangerous Drugs Ordinance, 1952 states that a convicted person:

"shall be guilty of an offence against this Ordinance and liable on conviction to a fine of $10,000 or to imprisonment for a term not exceeding five years or to both such fine and imprisonment."

It was held that the fine of $10,000 provided under the section is not mandatory. It is in fact the maximum penalty provided and the court has a discretion to impose a fine of any sum within the maximum amount of $10,000. In *Public Prosecutor* v. *Wahab*[3] section 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, provides that on conviction an accused:

"shall be liable to imprisonment for a term not exceeding two years and to whipping"

is not mandatory and a fine may be imposed in lieu of imprisonment. In *Darus* v. *Public Prosecutor*[4] it was held that the term of imprisonment of one year under section 297 of the Criminal Procedure Code is a maximum sentence and that any lesser term may be imposed as is considered appropriate to the circumstances of the particular case. It may be seen that in all these cases the words are

"shall be liable to imprisonment for a term of ... years or fine *etc.*"

In the context of section 15(4) of the Prevention of Crime Ordinance the words are

"shall be liable to imprisonment for a term not exceeding five years and not less than two years."

From that it seems to me that the court has an absolute discretion to impose the maximum sentence of 5 years or any lesser sentence the minimum of which must not be less than two years.

I would therefore set aside the sentence of fine imposed by the lower court and substitute a sentence of two years' imprisonment. The said fine is to be refunded to the offender.

Order accordingly.